

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Joseph F. Richard, III NAL/Acct. No. 315OR0007
Amateur Radio Station
N5JNX

ORDER

Adopted: June 30, 1995;

Released: July 10, 1995

By the Chief, Compliance and Information Bureau:

I. INTRODUCTION

1. Mr. Joseph F. Richard, III (Petitioner) filed a Petition for Reconsideration, seeking review of the monetary forfeiture of \$2,000 issued under authority of Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b), for violating Section 333 of the Act, 47 U.S.C. § 333, and Section 97.101(d) of the Commission's rules, 47 C.F.R. § 97.101(d). For the reasons noted below, the Bureau reduces the monetary forfeiture to \$1,000.

II. BACKGROUND

2. On April 12, 1993, between 8:13 pm and 9:29 pm, Petitioner transmitted signals on amateur radio frequencies 146.85 MHz and 146.76 MHz from amateur radio station N5JNX. Petitioner used these signals to interfere with the communications of other amateur operators. Based on transcripts made from a recording of these transmissions, the New Orleans Office issued Petitioner a Notice of Apparent Liability (NAL) in the amount of \$2,000 on September 10, 1993.

3. Petitioner responded to the NAL, arguing that he did not willfully or maliciously cause interference to other operations, and that he was the one being interfered with because he was on the frequency. He also acknowledged having conversed for a lengthy period of time on the date in question. On November 5, 1993, the New Orleans Office issued a Notice of Forfeiture (NOF) for \$2,000. The Petitioner now appeals, stating that no particular complainant claimed that he was interfering with their communications, that the NAL relies upon tapes and transcripts that have been doctored or are inaccurate, and that the New Orleans Office was not objective in handling his case.

III. DISCUSSION AND CONCLUSION

4. As an initial matter, we note that, in assessing the forfeiture amount, the New Orleans Office followed the forfeiture guidelines established in the Commission's *Policy Statement, Standards for Assessing Forfeitures*, (Policy Statement), 8 FCC Rcd 6215 (1993). On July 12, 1994, however, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). On reconsideration, the Bureau has reassessed the amount pursuant to the statutory

guidelines set forth in Section 503 of the Act, 47 U.S.C. § 503(b)(2)(D). In particular, Section 503(b) of Act requires that the Commission "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." 47 U.S.C. § 503(b)(2)(D).

5. Turning now to Petitioner's arguments, we first note that the transcripts of Petitioner's transmissions provide sufficient evidence upon which to conclude that Petitioner violated section 97.101(d) of the rules. In this regard, the transcripts reveal that, at approximately 8:13 pm on April 12, 1993, amateur radio station N5NBI, operating on 146.85 MHz, requested that operators checking into the net that evening wait for recognition before transmitting. Petitioner's station N5JNX was identified as one of two operators that would not be recognized by the net. Despite this fact, Petitioner engaged amateur station KA5OWW in conversation for 30 minutes over communications in progress. When the net moved operations to a new frequency of 146.76 MHz, Petitioner and station KA5OWW followed to the new frequency and renewed their conversation over communications in progress on this frequency for another 23 minutes until the net moved operations back to the original frequency of 146.85 MHz.

6. We reject Petitioner's contention that the recordings and transcripts on which the NAL is based are inaccurate or misleading. The transcripts were written by staff personnel at the Commission's New Orleans Office from recordings made the evening of April 12, 1993, by a local Amateur Auxiliary group. Use of amateur volunteers for the purpose of monitoring violations in the amateur service is permitted by the Act, 47 U.S.C. § 4(f)(4)(C). In fact, the amateur radio community has distinguished itself for its self-policing operations. See H.R. Rep. No. 765, 97th Cong., 2d Sess. 19 (1982) (Commission reporting to Congress the success of amateur self-monitoring efforts). In the instant case, the transcripts record only those portions of dialogue necessary to determine that Petitioner's repeated transmission over net operations, including two conversations over twenty minutes in length, constituted willful or malicious interference in violation of Section 97.101(d). Other portions not relevant to this finding are omitted from the transcripts. In short, the transcripts fully support the facts set forth in the NAL.

7. We also reject Petitioner's claim that the New Orleans Office was not objective in handling Petitioner's case. In support of this claim, Petitioner first notes that the New Orleans Office issued Petitioner a Notice of Violation on March 20, 1992, for causing interference to amateur communications on November 29, 1991. Thus, Petitioner seems to suggest that the New Orleans Office was already predisposed against the Petitioner. In assessing a monetary forfeiture, the Commission may consider "any history of prior offenses" committed by the violator. 47 U.S.C. § 503(b)(2)(D). Nonetheless, Petitioner's previous violation was not referenced in the NAL and therefore was not a factor in determining the initial forfeiture amount. Therefore, Petitioner's claim that the New Orleans Office was predisposed against Petitioner is without merit.

8. In addition, Petitioner claims that the Commission staff who worked on the case have a personal grudge against Petitioner, and are taking the enforcement actions alone without guidance or restraint from either the Bureau or the Commission. As indicated above, the transcripts in this case provide sufficient evidence to determine that Peti-

tioner violated Section 97.101(d) of the rules. Moreover, at the time the NAL was issued (as well as currently) the Commission's rules expressly authorized the Chief, Compliance and Information Bureau to issue notices of apparent liability in the amount of \$20,000 or less, and "to further delegate this authority." 47 C.F.R. § 0.311(d)(1). This forfeiture authority was delegated to the Engineer-in-Charge of each of the Bureau's field offices. See 47 C.F.R. §§ 0.311, 1.106, 1.115. We find that the Commission staff in this case acted entirely within the authority delegated by the Commission's rules.

9. We have reconsidered the monetary forfeiture amount in this case in accordance with the statutory factors set forth in Section 503(b) of the Act, 47 U.S.C. § 503(b)(2)(D). Recognizing the serious problem of willful or malicious interference to communications on amateur radio frequencies, taking into account congressional interest in this problem, see H.R. Rep. No. 552, 103d Cong., 2d Sess. 40 (1994), and given the evidence in this case demonstrating that Petitioner's actions could not in any way be considered accidental or unintentional, we conclude that the appropriate forfeiture amount is \$1,000.

IV. ORDERING CLAUSES

10. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Sections 1.80 and 1.106 of the Rules, 47 C.F.R. §§ 1.80, 1.106, the petition for reconsideration is GRANTED in part and the monetary forfeiture is REDUCED. Petitioner has thirty (30) days in which to appeal this decision pursuant to Section 1.115 of the rules. 47 C.F.R. § 1.115.

11. IT IS FURTHER ORDERED that Joseph F. Richard, III must pay the forfeiture amount of one thousand dollars (\$1,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.¹ Please place NAL/Acct. No. 315OR0007 on the remittance and mail to:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

12. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to Joseph F. Richard, III.

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Chief, Compliance and Information Bureau

¹ Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's rules.